REMARKS

The Claim Amendments

Applicants have canceled claim 10 and amended claims 9 and 12. Applicants have added claims 13-24 directed to the elected subject matter. Following entry of this amendment, claims 1-9 and 11-24 will be pending in this application.

Applicants have canceled claim 10 without prejudice or waiver of applicants' right to file for and obtain claims directed to any canceled subject matter in this application or in future divisional or continuing applications claiming priority and benefit from this application.

Applicants have amended claim 12 to depend from claim 11 instead of claim 7 to correct an inadvertent error in claim dependency.

Applicants have amended claim 9 to recite a mouse having incorporated in its genome a gene construct comprising a reporter gene operably linked to a promoter containing a transcriptional regulatory element that is up-regulated by a tumor-induced transcription factor, said mouse further comprising a neoplastic transformation-promoting genetic modification. Support for this amendment may be found, for example, at specification page 2, lines 10-15; page 3, lines 18-20 and 29-30; and page 4, lines 4-10.

Applicants have added claims 13-24 directed to the elected subject matter. Support for claim 13 may be found, for example, at specification page 1, lines 18-20. Support for claim 14 may be found, for example, at specification page 1, line 20 to page 2, line 1. Support for claim 15 may be found, for example, at specification page 2, lines 1-3. Support for claim 16 may be found, for example, at specification page 2, lines 3-4. Support for claim 17 may be found, for example, at specification page 2, lines 4-6. Support for claim 18 may be found, for example, at specification page 6, line 23 to page 7, line 12. Support for claim 19 may be found, for example, at specification page 6, lines 23-25. Support for claim 20 may be found, for example, at

specification page 6, lines 25-29. Support for claim 21 may be found, for example, at specification page 6, line 27. Support for claim 22 may be found, for example, at specification page 7, line 9. Support for claim 23 may be found, for example, at specification page 7, lines 5-6. Support for claim 24 may be found, for example, at specification page 7, lines 7-8.

None of the amendments introduces new matter.

The Restriction Requirement

The Examiner has required restriction of the claims of this application under 35 U.S.C. § 121 to one of the following three Groups:

> Group I: Claims 1-8 drawn to a gene construct comprising a reporter gene operably linked to a promoter containing a transcriptional regulatory element that is up-regulated by a transcription factor preferentially produced in neoplastic cells; and a cell comprising the same;
>
> Group II: Claims 9-10 drawn to a nonhuman mammal comprising a cell comprising a gene construct comprising a reporter gene operably linked to a promoter containing a transcriptional regulatory element that is up-regulated by a transcription factor preferentially produced in neoplastic cells; and
>
> Group III: Claims 11-12 drawn to a method of detecting a neoplasia in a nonhuman mammal, comprising providing a mammal wherein some of its somatic cell genomes comprises a neoplastic transformation-promoting genetic modification and a reporter gene operably linked to a transcriptional regulatory element that is up-regulated by a transcription factor preferentially produced in neoplastic cells, and detecting a signal from the reporter gene.

Applicants elect the claims of Group II (claims 9-10), without traverse, for initial examination. Applicants' election is made expressly without waiver of applicants' rights to continue to prosecute and to obtain claims to the non-elected subject matter either in this application or by filing divisional or continuing applications claiming priority and benefit from this application.

The Species Election

The Examiner has also requested that applicants elect a single species of:

1) Transcriptional regulatory elements: beta-catenin response element, E2F response element, Forkhead response element, or Smad-2/Smad-3 response element (claim 2);

2) Reporter gene: enzyme (β-galactosidase, alkaline phosphatase, chloramphenicol), bioluminescent protein (luciferase), or fluorescent protein (green fluorescent protein, yellow fluorescent protein, enhanced yellow fluorescent protein, red fluorescent protein and blue fluorescent protein) (claims 3-6);

3) Nonhuman mammal: mouse, rat, hamster or guinea pig (recited on p. 10 of the specification); and

4) Neoplastic transformation-promoting genetic modification: INK4a, P53, APC, PTEN, Rb , DPC4, KLF6, GSTP1, ELAC2/HPC2, NKX3.1, MSH2, MSH6, PMS2, Ku70, Ku80, DNA/PK, ATR, ATM, XRCC4, MLH1, myc or ras (recited on p. 7 of the specification).

The Examiner further states that upon allowance of a generic claim, applicants will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim.

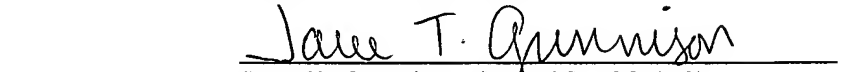
Applicants elect the beta-catenin response element as the transcriptional regulatory element, a luciferase enzyme as the reporter gene, the mouse as the nonhuman mammal and APC as the gene having a neoplastic transformation-promoting genetic modification. Claims 9, 13, 14, 16, 18 and 23 are readable on that combination of elected species.

Applicants make this species election specifically without waiver of applicants' right to file for and obtain claims on the non-elected species in this application or in divisional or continuing applications claiming priority and benefit from this application.

CONCLUSION

Applicants request favorable consideration of the application and early allowance of the pending claims.

Respectfully submitted,



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